

February 2024

*Yoorrook Justice Commission
Housing Issues Paper
Online submission
And via email to
enquiries@yoorrook.org.au*



Dear Yoorrook Justice Commission

Submission on systemic injustice in housing and homelessness

We are writing on behalf of Smart Justice for Women, a coalition of nearly 40 organisations from the legal assistance sector, Aboriginal Community Controlled organisations (ACCOs), community services sector and academia who are all working together to end the criminalisation of women in Victoria.

Our members include women with lived expertise of the criminal legal system, policy specialists and direct service providers who work with women who are criminalised and with their families.

Acknowledgements

Smart Justice for Women pays our deepest respect to Traditional Owners across Victoria, in particular, to all Elders past and present. We acknowledge the knowledge, cultures and continued history of all First Nations people in Victoria.

We recognise the specific barriers and systemic issues faced by First Nations women who come into contact with the criminal legal system, the continuing impact of racism and colonisation, including over-representation of First Nations women in the criminal legal system, and the importance of working with ACCOs as part of our mandate.

We recognise the leadership of First Nations communities and organisations in advocating for reform for First Nations women. We are committed to prioritising First Nations self-determination, and ensuring that reforms impacting First Nations communities are decided upon and implemented by First Nations people.

We also acknowledge that responses to the criminalisation of women will be most effective and safe for women if they are informed and developed in partnership with women with lived and living experience of the criminal legal system.

Introduction

We welcome the opportunity to provide this submission to assist Yoorrook in its investigation into systemic injustice experienced by First Nations peoples in relation to housing and homelessness. Our submission focuses on the injustices experienced by First Nations women who have had contact with the criminal legal system, including those who are exiting prison.

We seek to highlight the link between housing instability and criminalisation for First Nations women, in particular those who are victim survivors of family violence. This is clearly demonstrated in Flick's story on page four of this submission. We express our sincere gratitude to Flick for sharing her story as part of this submission.

We will also set out key principles that we believe should guide the development of housing policy to address the unacceptably high rates of homelessness and housing instability for First Nations women who have had contact with the criminal legal system.

Context: women in the criminal legal system

Women have specific, gendered pathways to criminalisation and imprisonment that are different to men. There is a clear link between disadvantage and women's involvement with the criminal legal system. Most women who are drawn into the criminal legal system have experienced trauma,¹ including childhood and adult victimisation, involvement with child protection, poverty, sexual abuse, and family violence. Without appropriate supports, these experiences can drive women to engage in behaviours that lead to them becoming criminalised, with damaging ripple effects through their families and communities.

Women in prison are also more likely than men to have committed low-level offences² – almost 20 per cent women on remand as of June 2022 had drug offences as their most serious charge.³ Low-level offending is often linked to income inequality, poverty, mental ill-health, or substance use,⁴ factors which are themselves inextricably linked to homelessness and housing instability.

First Nations women are grossly over-represented in the criminal legal system. Across Australia, 33 per cent of women in prisons identify as Aboriginal or Torres Strait Islander.⁵ In Victoria, as at May 2023, there were 38 Aboriginal and Torres Strait Islander women imprisoned in Victoria, comprising 12 per cent of the total female population,⁶ despite Aboriginal or Torres Strait Islander women making up just one per cent of Victoria's population overall.⁷ The high rates of First Nations women placed in custody

¹ Caruana, C. Campbell, E., Bissett, T & Ogilvie, K., *Leaving custody behind: Foundations for safer communities and a gender-informed criminal justice systems* Centre for Innovative Justice, 2021 RMIT University, p. 23.

² Crime Statistics Agency, *Characteristics and offending of women in prison in Victoria, 2012-2018*, November 2019.

³ Corrections Victoria, *Annual Prisoner Statistical Profile*, June 2022.

⁴ Parliament of Victoria, Legislative Council – Legal and Social Issues Committee, *Inquiry into Victoria's Criminal Justice System*, p. 478-480.

⁵ Ibid.

⁶ Yoorrook Justice Commission, *Inquiry into Victoria's Criminal Justice and Child Protection Systems*, Transcript of Day 5 – Public Hearings, 3 May 2023, p. 387.

⁷ Australian Bureau of Statistics, *Corrective Services Australia – December Quarter 2022*, 2023. Note that point in time data does not fully capture the large number of women entering custody for short periods of time – see Safer Prisons, Safer People, Safer Communities, Final Report of the Cultural Review of the Adult Custodial Corrections System, December 2022, , p. 577.

represents a significant failure to reach the national Closing the Gap target of reducing the rate of incarceration by at least 15 per cent by 2031.⁸

Housing and the criminalisation of women

As the housing crisis worsens, women in Victoria are at increasing risk of entering the criminal legal system or facing delays in exiting prison as a result of a lack of affordable and social housing.⁹ The lack of housing also means that hundreds of women in Victoria are at risk of being released from prison into homelessness each year, or returning to high risk settings.¹⁰

Homelessness and housing instability propel women into the criminal legal system, creating the conditions for increased police surveillance and poverty-driven behaviours that lead to criminal justice involvement. In turn, homelessness and housing instability also keep women in prison for longer. In many cases, women are placed on remand or experience delays in being released from prison *purely* due to lack of available housing.¹¹

A Legal Aid NSW study of women leaving Silverwater Prison in NSW over a 12-month period found that only 12 per cent believed that they had access to stable housing on release from prison.¹² A Victorian study conducted in the Bail and Remand Court found that more than one third of women were homeless or had unstable housing at the time of their court hearing.¹³

Family violence is the leading cause of homelessness, with 44 per cent of presentations to Victorian homelessness services involving family violence. First Nations women are 45 times more likely to experience family violence than non-Aboriginal women.¹⁴ Devastatingly, across Australia, 7,690 women a year return to the perpetrators of violence due to having nowhere affordable to live.¹⁵

International research continues to show that safe housing is the foundation for a successful transition from prison into the community, and is critical for women to re-establish connection to their community and be safely reunited with their children.¹⁶ Overall, women in prison indicate that early support to find housing would have prevented them from offending or reoffending.¹⁷

⁸ Note that this target relates to Aboriginal and Torres Islander adult incarceration – see Closing the Gap website for further information: <https://www.closingthegap.gov.au/national-agreement/targets>

⁹ Social housing includes both public housing and community housing. It is for people on low incomes, especially those who have recently experienced homelessness or who have other special needs. There is no agreed definition of affordable housing in Australia. For the purposes of this document, affordable housing is housing where the cost is no more than 30 per cent of that household's net income. It is for people on very low, low and moderate incomes.

¹⁰ Ibid.

¹¹ Caruana, C. Campbell, E., Bissett, T & Ogilvie, K., *Leaving custody behind: Foundations for safer communities and a gender-informed criminal justice systems* Centre for Innovative Justice, 2021 RMIT University, p. 31.

¹² Ibid; Legal Aid NSW, (2015) *Aboriginal Women Leaving Custody: Report into Barriers to Housing* 4.

¹³ E Russell et al, *A Constellation of Circumstances – The Drivers of Women's Increasing Rates of Remand in Victoria*, July 2020, p. 20.

¹⁴ Royal Commission into Family Violence, *Final Report: Volume 5* (2015), p. 13.

¹⁵ Equity Economics, *Nowhere to Go: The Benefits of Providing Long Term Social Housing to Women that have Experienced Domestic and Family Violence*, July 2021, p. 5.

¹⁶ Caruana, C. Campbell, E., Bissett, T & Ogilvie, K., *Leaving custody behind: Foundations for safer communities and a gender-informed criminal justice systems* Centre for Innovative Justice, 2021 RMIT University, p. 31.

¹⁷ Ibid, p. 32; Prison Reform Trust & Soroptomist International, (2014) *Transforming lives. Reducing Women's Imprisonment*.

Housing and bail/remand

Along with other markers of disadvantage (including family violence, substance dependence and mental ill-health), homelessness is one of the ‘constellation of circumstances’ that can prevent women from securing bail and lead to further entrenchment in the criminal legal system.¹⁸

Lawyers working in the Bail and Remand Court have identified lack of secure housing as the biggest barrier women face when applying for bail.¹⁹ The overwhelming need for a stable home address places many women at a greater risk of being remanded in custody. This is exacerbated by the high rates of homelessness and housing instability faced by criminalised women, often due to family violence.²⁰

Housing and parole

The Adult Parole Board requires that parole applicants have an address of “suitable and stable accommodation” before they consider an application for parole.²¹ Victoria’s lack of social and affordable housing (in particular, public and Aboriginal community-controlled housing) is a huge barrier for women applying for or being granted parole. This is exacerbated by further barriers that many women face due to family violence in the home, caring responsibilities, and higher rates of homelessness and unstable housing prior to entry into prison.

The need for culturally safe housing for First Nations women in the criminal legal system

A lack of public and Aboriginal community-controlled housing continues to put First Nations women at an increased risk of entering and re-entering the criminal legal system, or being released into homelessness or high risk settings. Systemic racism exists across all aspects of society, including housing and is inherent in the criminal legal system.²² This is reinforced by high rates of homelessness and housing instability of First Nations people.²³ As per the Closing the Gap targets, First Nations people should have access to secure, appropriate, affordable housing that is aligned with their priorities and needs.²⁴

The devastating impacts of a lack of culturally safe housing and adjacent supports for First Nations women in contact with the criminal legal system is highlighted by Flick’s story.

¹⁸ Ibid; Russell, E., Carlton, B., Tyson, D., Zhou, H., Pearce, M. & Faulkner, J. (2020) A constellation of circumstances: The drivers of women’s increasing rates of remand in Victoria Fitzroy Legal Service and the La Trobe Centre for Health, Law and Society, Melbourne.

¹⁹ Russell, E. K., Carlton, B. and Tyson, D. (2022) “‘It’s a Gendered Issue, 100 Per Cent’: How Tough Bail Laws Entrench Gender and Racial Inequality and Social Disadvantage”, *International Journal for Crime, Justice and Social Democracy*, 11(3), pp. 107-121. doi: 10.5204/ijcjsd.1882. .

²⁰ Ibid; Domestic and family violence is the main reason that women and children leave their home in Australia. See e.g. Australian Housing and Urban Research Institute, *Housing, homelessness and domestic and family violence: What’s the policy issue?* March 2020.

²¹ Adult Parole Board, *Parole Manual*, June 2020.

²² Victorian Aboriginal Legal Service Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System November 2022, p. 31.

²³ Ibid.

²⁴ Above n 8 – Closing the Gap Target 9.

CASE STUDY

Ngarrindjeri woman Flick Chafer-Smith has firsthand experience of the systemic injustices associated with housing and homelessness.

Flick struggled with drug and addiction issues from a young age, leading to frequent interactions with the police. During this period, Flick lacked access to stable and secure housing. Without a residential address, Flick found it difficult to find work. A combination of poverty, addiction and a lack of stable housing caused Flick to spiral as she became increasingly entrenched in cycles of drug use, homelessness, and incarceration.

Flick was held on remand on multiple occasions, during which time she was unable to utilise the rehabilitative programs offered in prison, which are only available for individuals who have been sentenced. This made it difficult for Flick to break the cycles that had fueled her encounters with the criminal legal system.

Without a stable home to return to after periods of time spent in prison on remand, Flick was driven back to living with an abusive ex-partner on her release. She also fell back into the same social circles in which she had been using drugs prior to prison.

When Flick was given a prison sentence of three years, she used her time in prison to overcome her issues with drugs.

Once Flick had served her time, she applied for parole. However, despite being eligible on all other accounts, Flick was denied parole on the basis of homelessness. She had applied to be paroled at her mum's house in South-East Melbourne, but the application was rejected due to her history of offending in that area.

Without a home to return to, Flick was forced to wait in prison until appropriate housing became available. Flick spent an additional nine months in prison as a result of her homelessness. Flick was devastated to remain in custody.

Flick was eventually offered a unit in Braybrook, far from Flick's support network, and in an area that Flick did not know. Despite the isolation she felt in her new home, Flick was relieved to eventually be granted her release.

Flick's experiences illustrate the explicit link between housing, homelessness, and incarceration. A lack of housing drove her back to an abusive ex-partner and drug use, and ultimately led to a considerable extension of her time in custody.

Now an advocate for reform, Flick believes that there is need for greater integration of services that support people exiting prison with housing, employment, mental health and addiction. She also believes that First Nations people, and particularly First Nations women, require culturally safe services and housing that understand and respect First Nations women's unique family dynamics, ways of doing, and pathways in and out of prison.

First Nations women in Victoria should not be criminalised, denied bail, spend longer in prison, driven back to violent or abusive circumstances, or released from prison into homelessness or unsafe environments due to lack of housing.

Housing should empower women to make their own choices, exercise their rights, and have control over their own lives. As per the Housing First principles²⁵, and in recognition of housing as a basic human right, access to and retention of housing should not be conditional upon engagement with supports. Housing also should not be administered by Corrections Victoria.

Smart Justice for Women's position is that:

- All women should have a home to reduce their risk of entering the criminal legal system.
- No woman should be refused bail or parole because she does not have access to a home.
- No woman should be released from prison into homelessness due to a lack of affordable and social housing.
- No woman should be imprisoned, or remain in prison, due to a lack of appropriate housing.

This can be achieved by:

- Investing in new social housing by building a minimum of 60,000 new public and community homes by 2032.
- Investing in more than 5,000 social housing properties by 2036 for First Nations people in line with the Victorian Aboriginal Housing and Homelessness Framework.
- Ensuring that housing is provided to criminalised women on a Housing First basis.
- Ensuring that women exiting prison have access to culturally safe transitional housing and support delivered by community organisations and ACCOs for Aboriginal women.
- Investing in data and monitoring to determine future housing needs for women in contact with the criminal legal system.

In addition:

- Women who are eligible for parole and provide their consent should be automatically put on the priority waiting list for social housing when they start preparing their parole application.
- There should be increased investment in social and affordable housing options that specifically target women in the criminal legal system, including those exiting prison.

Smart Justice for Women also advocates for a justice re-investment approach, where funds earmarked for prisons are invested in:

- ACCOs to provide early intervention and prevention strategies to divert First Nations women and girls away from the criminal legal system at every opportunity.
- Holistic and culturally safe support strategies designed to reduce women's vulnerability to criminalisation.
- Public and social housing, in particular Aboriginal community-controlled housing.

²⁵ D Padgett et al, *Housing First: Ending Homelessness, Transforming Systems, and Changing Lives*, November 2015.

Principles to guide the development of housing policy

Smart Justice for Women has developed, through consultation with its members, a set of key principles that we submit should guide the development of housing policy to address the unacceptably high rates of homelessness and housing instability for First Nations women who have had contact with the criminal legal system.

1. All women should have a home

All housing provided to women – including social, affordable, and private housing – should be aimed at ensuring that women have a home and should meet accepted community standards of what constitutes a home.

Housing should be a person's home first and foremost, reflect the built form of Victoria's broader housing stock, be diverse and dispersed among the community (not centralised), not look like, or be designed as, a workplace for support providers or staff.

Housing should aim to ensure that Aboriginal people living in Victoria achieve positive housing outcomes.

2. All women should have access to housing that is stable and secure

It is important for women at risk of or recovering from homelessness, including victim survivors of family or sexual violence, to have a home that is stable and secure.

Housing should have security of tenure or the capacity to be permanent (i.e., capacity to enter into an ongoing lease agreement) and ensure residents can exercise tenancy rights over their home.

3. All women should have access to housing that meets their needs

Women have particular needs regarding safety and childcare that should be taken into account in meeting their housing needs.

Housing should be safe and free from violence, have appropriate space (multiple bedrooms if needed), be appropriate for children, meet the specific needs of trans and gender diverse communities, and be appropriate and accessible for people with disabilities.

Housing should be culturally safe (including the design, location and supports), and empower Aboriginal self-determination, being designed for and delivered by First Nations peoples.

4. Housing should empower women to exercise control over their own lives

When a woman requires support in their own home, the provision and management of their housing should be separate from the provision and management of their supports.

That is, housing should ensure that no single organisation has an undue level of influence over a person's life, and should enable a person to choose their support provider and change their support arrangements without this affecting their housing and vice versa.

If supports are provided in conjunction with housing, these supports should be provided by appropriate organisations, including Aboriginal Community Controlled Organisations for First Nations women.

5. Housing should empower women to make their own choices

Women should have a choice about where they live, who they live with, and who comes into their home and when, rather than this being determined by the housing or support provider.

Housing should support women to exercise agency and support family reunification, and self-determination for First Nations women.

For more information, please refer to our full 2023-2024 Policy Platform: *Ending the Criminalisation of Women in Victoria*, available [here](#).

More information about Smart Justice for Women is available [here](#).

Kind regards,

Elena Pappas and Sarah Lefevre

Co-Chairs

Smart Justice for Women

